

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                          |   |                                |
|--------------------------|---|--------------------------------|
| <hr/>                    | : | <b>CHAPTER 13</b>              |
|                          | : |                                |
| <b>Patrick J. Lyons,</b> | : | <b>BANKRUPTCY NO. 18-00042</b> |
|                          | : |                                |
| <b>Debtors</b>           | : |                                |
| <hr/>                    | : |                                |
| <b>Patrick J. Lyons,</b> | : |                                |
|                          | : |                                |
| <b>Plaintiff.</b>        | : |                                |
|                          | : |                                |
| <b>v.</b>                | : | <b>ADVERSARY NO. 18-00042</b>  |
|                          | : |                                |
| <b>M &amp; T Bank,</b>   | : |                                |
|                          | : |                                |
| <b>Defendant.</b>        | : |                                |
| <hr/>                    | : |                                |

**JOINT PRETRIAL STATEMENT**

AND NOW COMES Patrick J. Lyons, (the "Plaintiff"), by and through this counsel, Alaine V. Grbach, Esquire, and M & T Bank (the "Defendant"), by and through their counsel, Kevin McDonald, Esquire who file the following Joint Pre-Trial Statement:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.
2. The venue of this adversary proceeding is proper in this district pursuant to 28 U.S.C. § 1409(a).
3. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b).
4. The statutory predicates for the relief sought herein are Fed.R.Bankr.P. 7055 and Fed.R.Civ.P. 55.

#### **STATEMENT OF UNCONTESTED FACTS**

5. On April 11, 2019 (the “Petition Date”), the Debtor filed for protection under Chapter 7 of the Bankruptcy Code.
6. Frederick J. Reigel, Esquire, has been appointed Chapter 13 Trustee.
7. On May 13, 2014, the Plaintiffs filed a complaint (the “Complaint”) against the Defendant.
8. A summons (the “Summons”) was issued by the Clerk of the Bankruptcy Court pursuant to which the Defendant was required to serve an answer or other responsive pleading to the Complaint upon counsel for the Plaintiff and to file said answer or other responsive pleading with the Bankruptcy Court within 30 days of the issuance of the Summons. A copy of the Summons has been filed with this Court.
9. On March 5, 2018, a copy of the Summons, together with a copy of the Complaint, were served on the Defendant by United States First Class Mail, postage prepaid, in accordance with Fed.R.Bankr.P. 7004(b). A Certificate of Service was filed with this Court on March 12, 2015. A copy of the Certificate of Service has been filed with this Court.

10. The Defendant had timely served an Answer to the instant complaint.

11. Plaintiff owns his residence located at 35 Iris Circle, Elizabethtown, Pennsylvania (“the Residence”).

12. Bank of America holds a first mortgage and prior lien on the Residence, and has filed a Proof of Claim in the instant bankruptcy, in the amount of \$136,249.99.

13. Defendant, M & T Bank, holds a second mortgage on the residence, and has filed a Proof of Claim in the instant bankruptcy, in the amount of \$46,219.27.

#### **STATEMENT OF DISPUTED FACTS**

14. Whether the value of the Residence is in excess of \$136,249.99.

#### **RELIEF REQUESTED**

15. Plaintiff requests that Defendant’s Proof of Claim be deemed wholly unsecured.

16. Defendant maintains that its claim should be deemed as an allowed secured claim.

#### **LEGAL ISSUES PRESENTED**

28. Whether the fair market value.

#### **WITNESSES**

29. Plaintiff, Patrick J. Lyons, will testify as to the value and condition of his residence.

30. Rachel Stoltzfus, a realtor licensed to practice within the Commonwealth of Pennsylvania, will testify as to the value of the Residence.

#### **LIST OF EXHIBITS**

Plaintiff will introduce into evidence:

(a). Zillow Value of Residence;

(b). Market Analysis of the Residence

**LIST OF DISCOVERY ITEMS: NONE**

**ESTIMATED TRIAL TIME: 1 HOURS**

**CERTIFICATION**

28. The undersigned counsel hereby certifies that they have attempted good faith settlement negotiations without success.

**Respectfully submitted,**

By: /s/ Elaine V. Grbach

ELAINE V. GRBACH  
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Counsel for the Plaintiff

Dated:

By: /s/ Kevin McDonald

Counsel for the Defendant